trar is varied by declaring, as a result of the third inquiry, that at the date of her death the testatrix was entitled to No. 112 Bencoolen Street, Singapore and four pieces of land in Serangoon Road as described in paragraph 6 of the certificate.

The costs of the application, will be reserved for argument before me in chambers.

Order Accordingly.

Solicitors for plaintiff:—*Mendis & Ahlip.*
Solicitors for 1st defendant:—*Sisson & Delay.*
Solicitors for 5th defendant:—*Chan & Eber.*

[ORIGINAL CIVIL JURISDICTION].
TERRELL, Ag. C.J.
October 20, 1937.

IN RE THIO TIAUW SIAT (deceased).

CHANG KAM LONG (an infant)

v.

H. H. BUSFIELD AND ANOTHER.

[SINGAPORE SUIT No. 1068 of 1932]

Estate Duties Ordinance (Cap. 20), s. 23, sub-s. 1 and s. 26.—Estate Duty wrongly paid out of income instead of capital—necessity for adjustment.

A testator bequeathed property to his trustees with directions to distribute the income during a fixed period amongst a number of beneficiaries. When any beneficiary of income should die his share passed to and became divisible amongst the remaining persons entitled to share in such income by way of accretion to their shares in the proportions mentioned in the will. Upon the cesser of the life interest of a beneficiary of income so dying estate duty and interest thereon was paid out of the income of the trust estate and such payments were duly brought into the accounts which were rendered by the trustees and were filed in Court and which were passed by the Registrar in the presence of and without objection by certain of the beneficiaries of income. In view of the judgment in *Syed Hashim bin Kassim deceased,* (1936) S.S.L.R. 152; (1936) 5 M.L.J. 245 it later appeared that the duty ought to have been paid out of the capital from which the life interest which had failed was derived.

Held that the trustees ought now to adjust the payments in accordance with the correct position and to raise the necessary funds from capital under the directions of the Court.

Syed Hashim bin Kassim deceased, (1936) S.S.L.R. 152; (1936) 5 M.L.J. 245 followed.

ADJOURNED SUMMONS.

G. E. N. Oehlers for plaintiff.

Mallal for defendants.

Phillip Hoalim for S. H. Cheah, representative of class of persons entitled to the corpus of the estate.

The facts and arguments appear sufficiently from the judgment.

Cur. Ad. Vult.

TERRELL, AG. C.J.—By his will the testator Thio Tiauw Siat devised and bequeathed his residuary estate to trustees upon trust for the lives of ten named persons. During this time the income, in the events that have happened, was divisible among nine persons. Two of the Beneficiaries received a double share, and the income was accordingly divisible into eleven shares. Two of the beneficiaries have died and by the judgment of this Court dated the 8th November 1933, and made in this suit, it was declared that the shares of income given to the beneficiaries who had died upon their respective deaths passed to and were divisible amongst the remaining persons entitled to share in such income by way of accretion to their shares in the proportions mentioned in the will.

Estate duty became payable in respect of the cesser of the life interests of the deceased beneficiaries, and in May 1936 the duty and interest was paid out of the income of the trust estate. Such payments were duly accounted for in the half yearly accounts filed by the trustees, and such accounts were duly passed in the presence of and without objection by certain of the income beneficiaries.

From the judgment of Clark J. in *Syed Hashim bin Kassim deceased,* (1936) S.S.L.R. 152; (1936) 5 M.L.J. 245 it is clear that the duty ought to have been paid out of the capital from which the life interests that had failed, were derived.

On the present application the trustees ask in effect whether they are entitled to readjust the payment of the duty in accordance with the judgment of Clark J.

It was argued by Mr. Hoalim on behalf of the persons entitled to the corpus, that no adjustment could now be made on the ground that the Registrar's certificate approving of the accounts was final, and on the ground that money paid under a mistake of law could not be recovered.

As regards the Registrar's certificate I do not think that any difficulty arises. The certificate proves that the trustees had paid a certain sum for estate duty, but the question as to the fund from which the payments should have been made was never argued, and the Certificate cannot be regarded as *res judicata* upon this question.

The other argument, that money paid under a mistake of law is irrecoverable, appears to me to be founded upon a misconception of the circumstances. The trustees have not in fact paid anybody except the Commissioner of Estate Duties, and there is no suggestion that such payment was not proper. What the trustees have done is to debit the life interests with a payment which should have been made from corpus. The persons entitled to the corpus have not altered their position as a result of the failure of the trustees to make the payment out of the corpus, and accordingly no question of estoppel arises.

The only case where money paid by trustees has been held to be irrecoverable is when it would be a hardship upon the beneficiaries who have received money in good faith to repay money which they have probably spent. See *in Re Horne,* [1915] 1 Ch. 76. In that case the executors of a trustee who had through carelessness

overpaid some of the beneficiaries were held not to be entitled to recover, but in two subsequent cases *In re Ainsworth*, [1915] 2 Ch. 96 and *In re Musgrave*, [1916] 2 Ch. 417 this decision was not accepted as being of general application. In the latter case Neville J. states "It has been in my opinion the practice of the Court when administering an estate of a deceased person in cases where trustees have under an honest mistake overpaid one beneficiary, in the adjustment of the accounts between the trustees and the *cestui que trust* to make allowance for the mistake in order that the trustee may so far as possible be recouped the money which he has inadvisedly paid." Again in the earlier case of *Dibbs* v. *Goren*, 50 E.R. 904 Lord Langdale M.R. said "Where a trustee takes on himself to act upon his own authority and pays to the parties beneficially interested sums to which they are not entitled, it becomes necessary for this Court to enforce the execution of the trust by recovering back the sum thus received contrary to the trust."

These cases establish a principle which is far wider than any that may be necessary for the decision of the present case. As I have said the persons entitled to the corpus have not been paid anything, but they are liable for a payment which has been wrongly debited to the persons entitled to the income. There is no reason in principle, or on the authorities, why the proper adjustment should not be made. The trustees should prepare a scheme for raising the necessary funds from capital by sale of a part of the immovable property or by means of a mortgage.

The costs of all parties should be taxed as between solicitor and client and paid out of the estate.

Order Accordingly.

Solicitors for plaintiff:—*Claude da Silva & Company.*
Solicitors for trustees:—*Mallal & Namazie.*
Solicitors for S. H. Cheah:—*Mendis & Ahlip.*

[ORIGINAL CIVIL JURISDICTION]

TERRELL, Ag. C.J.

October 11, 1937.

RE CHOONG CHAK CHOON, deceased.

FONG CHOONG CHENG & WONG SAN ..... Plaintiffs.

vs.

CHUNG YOK LAM (w) AND OTHERS ..... Defendants.

[SINGAPORE ORIGINATING SUMMONS No. 112 of 1937].

Conveyancing and Law of Property Ordinance (Cap. 118) s. 73, sub-s. 1—Moneys payable under an endowment policy of assurance.

As assured effected an endowment policy of assurance for a certain sum on his life expressed to be payable to himself or his assigns if he be living at the maturity of the policy. In the event of his death before the maturity of the policy the sum insured was to be payable to certain named beneficiaries set out in the policy. The assured reserved to himself the power to revoke the named beneficiaries and to appoint new beneficiaries and also to assign charge or surrender the policy without the consent of the named beneficiaries. The assured died before the policy matured leaving a will which did not specifically refer to the policy moneys, nor did he purport to exercise any powers of revocation and new appointment under the policy.

Held, that the trust created by s. 73 of the Conveyancing and Law of Property Ordinance was a valid trust and not having been revoked still subsisted in favour of the named beneficiaries.

In re Ioakimidis' Policy Trusts (1925) 1 Ch. 403 followed.

ORIGINATING SUMMONS.

Burke for the Trustees.

Cheong Thutt Pitt for beneficiaries under the will.

Smith for beneficiaries named in the policy.

The facts and arguments appear sufficiently from the judgment.

Cur. Ad. Vult.

TERRELL, AG. C.J.—The deceased effected an insurance policy with the Great Eastern Life Assurance Company Limited for $20,000 payable on the 5th May 1939 or his previous death.

The policy was an Endowment policy, the premiums being payable half yearly for 10 years, or until the previous death of the assured. Such a policy has been held to be a policy on the life of the insured for the purpose of section 11 of the Married Women's Property Act 1882 which corresponds to section 73(1) of the Conveyancing and Law of Property Ordinance. [See *In re Ioakimidis' Policy Trusts*, (1925) 1 Ch. p. 403].

The material provisions of the policy are as follows: It is expressed to be payable "To the assured or his assigns if he be living at the maturity of the Policy." The policy then continues:—

> "In the event of the death of the Assured before the maturity of the Policy the Company shall pay the monies hereby assured to the Beneficiary named below if then living or to other the Beneficiary appointed by the Assured as hereinafter provided if then living unless prevented by any assignment or other act or thing done or suffered by the Assured during his lifetime and provided there is no statutory or other lawful restriction to the contrary. Provided always that the Assured may at any time by writing signed by him and delivered at the Head Office of the Company at Singapore revoke the appointment of the Beneficiary named below and may appoint another Beneficiary with or without reserving the right of revocation or new appointment. Notwithstanding anything hereinbefore contained it is hereby agreed and declared that the Assured may assign charge surrender or otherwise deal with this Policy without the consent of the Beneficiary whether named in this Policy or subsequently appointed by the Assured hereunder."